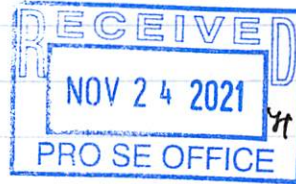


★ NOV 24 2021 ★

November 19, 2021

Delivery via First-Class Mail (USPS) BROOKLYN OFFICE

The Hon. Raymond J. Dearie  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201



re: United States v. Andre Wilburn, no. 19-CR-139 (RJD)

Dear Judge Dearie:

Please construe this letter as a formal motion. The defendant, Andre Wilburn, without waiving any other motions, and to be considered in addition to and in connection with any previous guilty plea withdrawal motions, respectfully moves this Court to grant him relief by permitting the defendant to withdraw his plea of guilty pursuant to Rule 11(d)(1) of the Federal Rules of Criminal Procedure, and as a basis sets forth the following:

On October 24, 2019, Magistrate Judge Lois Bloom conducted my plea colloquy and recommended that Judge Dearie accept my plea. Judge Bloom specifically said "I therefore recommend that Judge Dearie accept your plea of guilty..." at the end of the hearing. See EFC 54 pp. 23. Even if Magistrate Bloom followed Rule 11 from top to bottom, my plea is not "accepted" until the recommendation is adopted by Your Honor.

On September 10, 2021, the court received my motion to withdraw my guilty plea pursuant to Fed R. Crim. P. 11(d)(2)(B). see EFC 104.

On September 24, 2021, I emailed former counsel, Carlos Santiago, specifically asking if my plea was formally adopted by Your Honor. see



Exhibit A. That inquiry never received a response and subsequently former counsel was terminated suo sponte at ~~our~~ September 30, 2021 status conference, a hearing that I anticipated a decision in regards to my motion. Instead the conference was adjourned to October 28, 2021.

On October 19, 2021, the date of the status conference was adjourned to November 12, 2021 via an ELECTRONIC SCHEDULING ORDER.

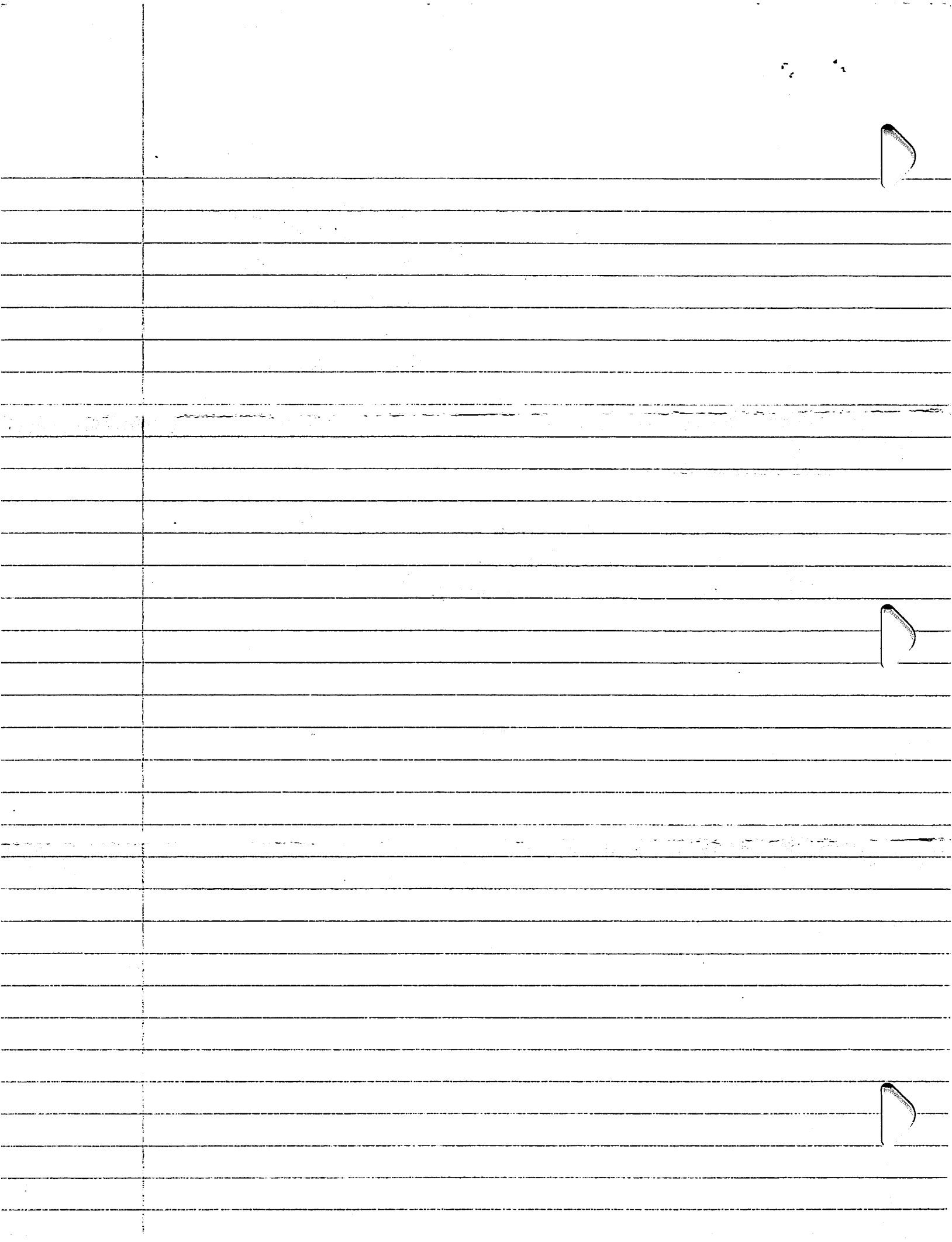
On October 29, 2021, a docket entry only entitled "Terminate Deadlines and Hearings as to Andre Wilburn" was entered. I fail to understand what this means in regards to withdrawing my plea and my case in general. I am aware that motion decisions must be rendered in 30 days or less. 18 USC 3161(h)(1)(J), see also United States v. Rodriguez, 63 F.3d 1159, 1163 (1st Cir 1995) (motion under advisement when court had received all papers which it expected from parties.)

As of the date of this letter, there is no on-the-record evidence of my guilty plea being accepted by the Court. Therefore, as per Rule 11(d)(1), I would like to respectfully withdraw my guilty plea for the reasons set forth in my Motion to withdraw my guilty plea. ECF 104. see also United States v. Davila-Ruiz, 790 F.3d 249 (1st Cir 2015); United States v. Chaudhury, 528 F. App'x 25, 26 n. 1 (2d Cir 2014) (summary order) (Both Parties agree that following [the defendant's] guilty plea in front of the Magistrate Judge, the District Court failed to formally accept [the Defendant's] plea...")

Respectfully submitted,  
~~Andre Wilburn~~  
Andre Wilburn # 73208-298  
MBC Brooklyn  
PO Box 329002  
Brooklyn, NY 11232

Certificate of Service

I hereby certify that I have this 19<sup>th</sup> day of November, 2021 served a copy of the foregoing letter-Motion upon counsel for the government, Virginia Nguyen, by United States Mail, first-class postage paid.



# Exhibit A

Trulincs message questioning adoption of plea

09/24/2021

TRULINCS 73608298 - WILBURN, ANDRE SHAWN - Unit: BRO-I-A

---

FROM: 73608298  
TO: Santiago, Carlos  
SUBJECT: RE: RE: Court adjournment  
DATE: 09/24/2021 06:26:06 PM

Is there any documentation on record with the Court of Judge Dearie adopting Magistrate Bloom's recommendation and accepting my guilty plea? If there is evidence of this, I would like to have it prior to our conference next week.

Please let me know what you find as soon possible. Thanks.  
-----Santiago, Carlos on 9/24/2021 1:06 PM wrote:

>

Our status conference in front of Judge Dearie was adjourned to Thursday September 30th at 4pm.

ANDRE SHAWN WILBURN on 8/21/2021 11:38:59 AM wrote  
Thanks.  
-----Santiago, Carlos on 8/20/2021 10:06 PM wrote:

>

Here is what the court posted on the docket regarding your pro se motion:

ELECTRONIC ORDER as to Andre Wilburn re [101]Pro Se Letter/Motion, [100] Pro Se Letter/Motion. Counsel for government is directed to file a response to above pro se motions on or before 9/7/2021. The United States Attorney shall serve a copy of its' response upon the defendant and his counsel and electronically file a copy, with proof of service, with the Clerk of the Court.

ANDRE SHAWN WILBURN on 8/17/2021 3:20:52 PM wrote  
Ok  
-----Santiago, Carlos on 8/17/2021 1:06 PM wrote:

>

Hello I'm planning to come down Thursday. If that changes, I'll let you know.

ANDRE SHAWN WILBURN on 8/3/2021 1:09:02 PM wrote  
It's important that MDC has running water so that I could properly prepare for visits as well. This is the second time that the water was shut off prior to my meeting with you. The water issue was the problem last time as well. You know we have to be strip searched and that's embarrassing enough without body odor to match.

I waited in the hallway for 45 minutes for the elevator today. Of course my cases are important, but the facility is also supposed to provide me with necessary subsistence, like running water for hygiene. Additionally the facility is not supposed to impede my access to the courts by intentionally hindering my lawyer visits...  
-----Santiago, Carlos on 8/2/2021 4:06 PM wrote:

>

If my schedule goes well, I'll be seeing you tomorrow morning. Again, it is important to reiterate that you come down to see me. You refused my last visit and we need to go over the sentencing in front of Judge Dearie and your other case in front of Judge Brodie.

Talk soon.



ALICE WILSON  
MIL BROOKLYN  
PO Box 329002

Brooklyn, NY 11232

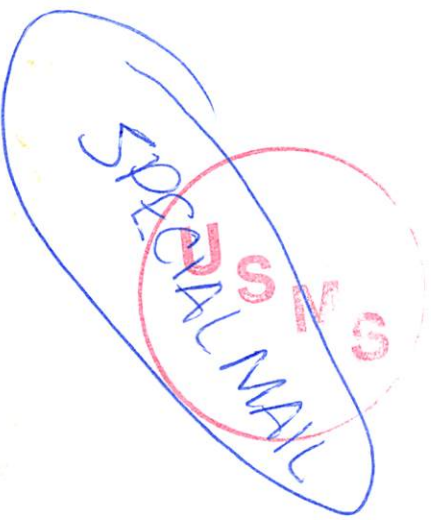
NEW YORK NY 100



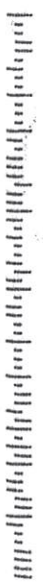
FOREVER / USA

The Hon. Raymond J. Deane  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

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to return the material for further information  
or clarification. If the writer encloses an enclosure  
for forwarding to another address, please  
return the enclosure to the above address.